

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBER: 92-0957 CS

Controlled Substance Excise Tax

For Tax Period: 11/16/92

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Departments official position concerning a specific issue.

ISSUE

I. Controlled Substance Excise Tax Imposition

Authority: IC 6-7-3-5; Bryant v. State, 660 N.E.2d 290 (Ind. 1995)

Taxpayer protests the imposition of the controlled substance excise tax.

STATEMENT OF FACTS

Taxpayer was arrested on November 16, 1992 in Morgan County, Indiana for possession of marijuana. The Department assessed the controlled substance excise tax against the taxpayer, based on a weight of 2,272.50 grams, resulting in a base tax assessment of \$90,900.00, plus a one hundred percent penalty. Taxpayer protested this assessment. Additional facts will be provided below.

I. Controlled Substance Excise Tax Imposition

DISCUSSION

Pursuant to IC 6-7-3-5 the controlled substance excise tax is assessed upon the possession, delivery and manufacturing of controlled substances. Taxpayer was found in possession of marijuana and the controlled substance excise tax was assessed. Taxpayer argues that he was criminally prosecuted and served time in an Indiana prison. The Indiana controlled substance excise tax assessment was a second jeopardy in violation of the Double Jeopardy Clause. Pursuant to Bryant v. State, 660 N.E.2d 290 (Ind. 1995), the Indiana Supreme Court found there was a double jeopardy issue, and that the first jeopardy attached when the Department served the taxpayer with the Record of Jeopardy Findings, Jeopardy Assessment Notice and Demand Notice. The Bryant court also found jeopardy did not attach in the taxpayer's criminal prosecution until the jury was sworn in the criminal trial. Accordingly, the Double Jeopardy Clause barred the taxpayers criminal prosecution and not the Departments tax assessment. Bryant, pp.298-300. In this case, the taxpayer was presented with the assessment notice on November 18, 1992, two days after his arrest.

Taxpayer has not submitted any evidence that the Departments assessment of the controlled substance excise tax came after the date the jeopardy attached for his criminal prosecution.

FINDING

Taxpayers protest is denied.